Friday
June 25, 1999

Part IV

Department of Education

34 CFR Part 602

The Secretary's Recognition of Accrediting Agencies; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 602

RIN 1840–AC80

The Secretary's Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Secretary's recognition of accrediting agencies to implement provisions added to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998. The Secretary recognizes accrediting agencies to assure that those agencies are, for HEA and other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

DATES: We must receive your comments on or before August 24, 1999.

ADDRESSES: Address all comments about these proposed regulations to Karen W. Kershenstein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3915, ROB–3, Washington, DC 20202–5244. If you prefer to send your comments through the Internet, use the following address: karen__kershenstein@ed.gov

If you want to comment on the information collection requirements in these proposed regulations, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein. Telephone: (202) 708–7417. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment:

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the accrediting agency recognition process.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3915, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call FIRS at 1–800–877–8339.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals web site (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, each negotiating committee met to develop proposed regulations for several days each month, from January through May.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of the negotiating committee, which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers.
American Association of Community Colleges.
American Association of Cosmetology Schools.
American Association of State Colleges and Universities.
American Council on Education.
Association of American Universities.
Association of Jesuit Colleges and Universities.
Career College Association.
Council for Higher Education Accreditation.

Council of Recognized National Accrediting Agencies, consisting of the Accrediting Bureau of Health Education Schools, the Accrediting Commission of Career Schools and Colleges of Technology, the Accrediting Council for Continuing Education and Training, the Accrediting Council of Independent Colleges and Schools, the Council on Occupational Education, the Distance Education and Training Council, and the National Accrediting Commission of Cosmetology Arts & Sciences.
Council of Regional Accrediting Commissions, consisting of the Commission on Higher Education of the Middle States Association of Colleges and Schools, the Commission on Institutions of Higher Education and the Commission on Technical and Career Institutions of the New England Association of Schools and Colleges, the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools, the Commission on Colleges of the Northwest Association of Schools and Colleges, the Commission on Colleges of the Southern Association of Colleges and Schools, and the Accrediting Commission for Senior Colleges and Universities and the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.
Education Finance Council.
Legal Services Counsel (a coalition).
National Association for Equal Opportunity in Higher Education.
National Association of College and University Business Officers.
National Association of Independent Colleges and Universities.
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition).
National Association of State Universities and Land-Grant Colleges.
National Association of Student Financial Aid Administrators.
National Direct Student Loan Coalition.
National Women's Law Center.
State Higher Education Executive Officers Association.
The College Board.
The College Fund/United Negro College Fund.
United States Department of Education.
United States Student Association.
US Public Interest Research Group.

Under committee protocols, consensus meant that there was no dissent by any member of the committee. Thus, the proposed regulations in this document have been agreed to by each of the organizations and groups listed as members of the committee.

To expedite its work, the negotiating committee established an accreditation subcommittee, which was made up of the following members, in addition to any members of the full committee:

Accrediting Association of Bible Colleges.
Accrediting Commission of Career Schools and Colleges of Technology.
Association of Specialized and Professional Accreditors.
Commission on Higher Education of the Middle States Association of Colleges and Schools.
Commission on Colleges of the Southern Association of Colleges and Schools.

The subcommittee made recommendations to the full negotiating committee, which in turn reached final consensus on the proposed regulations in this document.

Changes From Existing Regulations

The following discussion reflects proposed changes to the existing regulations governing the Secretary's recognition of accrediting agencies. Some of the proposed changes incorporate provisions contained in the Higher Education Amendments of 1998, the most significant of which concern the standards accrediting agencies must have, the timeframe for agencies to come into compliance with the criteria for recognition, and distance education. Other proposed changes are the result of discussion and subsequent consensus among negotiators about how to improve the current regulations by clarifying existing regulatory language and eliminating redundancies. All of the changes are discussed in the order in which they appear in the proposed regulations.

Please note that the proposed regulations differ organizationally from the current regulations because we have rewritten them to comply with Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing.'' For your convenience, the Appendix contains a distribution table listing the sections contained in the current regulations and where they may be found in the proposed regulations.

Subpart A—General (§§ 602.1 Through 602.3)

Subpart A of the current regulations contains basic information describing the purpose of the regulations and the definitions that apply. It also contains some requirements agencies must meet if they wish to be recognized. Subpart A of the proposed regulations contains only the basic information about the purpose of the regulations and the definitions that apply. The only significant changes proposed in subpart A relate to some of the definitions contained in § 602.3. These are discussed in the next section.

Section 602.3 What Definitions Apply to This Part?

Most of the definitions in the proposed regulations are the same as the ones in the current regulations. Substantive changes are proposed for two definitions, however, and the proposed regulations contain three new definitions.

Adverse accrediting action. The proposed regulations exclude probation and show cause from the type of action currently included in the term ''adverse action.'' Like § 602.26(c) of the current regulations, § 602.20 of the proposed regulations requires recognized agencies to take adverse action within a specified timeframe if their review of an institution or program indicates that it is not in compliance with agency standards. Including interim actions such as probation and show cause as ''adverse actions'' permits noncompliant institutions and programs to retain accreditation or preaccreditation well beyond the maximum timeframes the regulations prescribe. Under the proposed regulations, failure to achieve compliance within the prescribed timeframe would result in denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation unless the agency extends the timeframe for good cause.

Branch campus. Section 496(c)(3) of the HEA requires an institutional accrediting agency whose accreditation enables the institutions it accredits to establish eligibility to participate in Title IV, HEA programs to conduct a site visit within six months to each branch campus an institution establishes. While the 1998 amendments did not change the requirement for site visits within six months of the establishment of a branch campus, the House-Senate Conference Report noted that the definition of the term ''should not be so broad as to be overly burdensome on agencies and institutions.''

The current regulations define ''branch campus'' to include ''any location of an institution, other than the main campus, at which the institution offers at least 50 percent of an educational program.'' A significant number of locations met this definition. Consequently, agencies had to conduct a site visit within six months of the

establishment of each of these locations, even if the institution had a proven track record in establishing additional locations that met or exceeded the agency's standards. This proved to be burdensome and costly to both agencies and institutions. In addition, this portion of the definition of ''branch campus'' diverged from the definition of the same term in the institutional eligibility regulations contained in 34 CFR part 600.

The proposed regulations change the definition of ''branch campus'' used in 34 CFR part 602 to conform to the definition of the term in 34 CFR part 600 and require agencies to conduct site visits to additional locations that offer at least 50 percent of an educational program under certain circumstances. The specific circumstances are discussed under § 602.22.

Distance education. The current regulations do not use this term. In the accreditation section of the 1998 amendments, however, there are two references to distance education. The first, found in section 496(a)(4) of the HEA, requires that an agency consistently apply and enforce standards that ensure that the courses or programs offered by an institution, ''including distance education courses or programs,'' are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which they are offered. The second, found in section 496(n)(3) of the HEA, refers to the scope of recognition the Secretary grants to an agency and states, ''If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include the accreditation of institutions offering distance education courses or programs.''

The proposed regulations adopt the same definition of ''distance education'' as is used in establishing the Distance Education Demonstration Programs in section 488 of the Higher Education Amendments of 1998. The negotiating committee considered whether use of the term ''courses'' in the statutory definition could be misread to exclude programs offered through distance education. The committee concluded, however, that a fair reading of ''courses'' includes programs and is not limited to individual courses. The Secretary agrees with this interpretation.

Scope of recognition. The proposed regulations define a new term, ''scope of recognition.'' The definition would include the description contained in § 602.13(e) of the current regulations about the Secretary's recognition decision. The definition would also address the provision contained in section 496(n)(3) of the Higher Education Amendments of 1998 by adding the agency's accrediting activities related to distance education to the list of items to be referenced by the Secretary in the scope of recognition awarded to an agency. The proposed definition also states that the Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes.

Senior Department official. Not used in the current regulations, this term is defined in the proposed regulations as ''the senior official in the Department of Education who reports directly to the Secretary regarding accrediting agency recognition.'' The current regulations use another term, ''designated Department official,'' but in various places this term has meant the Assistant Secretary for Postsecondary Education or, more recently, the Chief Operating Officer; in others, it has meant a member of that individual's staff to whom he or she has delegated certain responsibilities. The use of the term ''designated Department official'' to describe different individuals in the Department has caused some confusion in the current regulations. For this reason, the proposed regulations do not use the term at all. Rather, they establish the responsibilities of Department staff, the National Advisory Committee on Institutional Quality and Integrity, and the senior Department official in different stages of the recognition process. Subparts C and D of the proposed regulations describe the specific circumstances under which the senior Department official makes recommendations regarding an agency's recognition.

Subpart B—The Criteria for Recognition (§§ 602.10 Through 602.28)

With a few exceptions, subpart B of the proposed regulations follows prior law in establishing the criteria for recognition. However, the criteria have been grouped into several subheadings to improve readability. A discussion of each group follows.

Basic Eligibility Requirements (§§ 602.10 through 602.13)

The proposed regulations group under this heading the recognition requirements found in §§ 602.1(b), 602.20, and 602.22 of the current regulations. If an agency seeking initial recognition fails to meet one or more of these basic eligibility requirements, § 602.31 of the proposed regulations authorizes Department staff to recommend to the agency that it withdraw its application for recognition.

Section 602.12 of the proposed regulations changes current requirements related to accrediting experience so that the requirements apply only to agencies seeking either initial recognition or an expansion of their scope of recognition. A recognized agency, by virtue of the fact that the Secretary has recognized it, has already demonstrated its compliance with these requirements and need not be burdened with demonstrating it again if it seeks continued recognition. A new agency, on the other hand, needs to demonstrate that it has accrediting experience in order to be recognized. Similarly, an agency that seeks to expand its scope of recognition needs to demonstrate its experience in the area for which it seeks the expansion.

The proposed regulations also specify the amount of experience required for initial recognition. Specifically, they require a new agency to have conducted accrediting activities, including making accrediting decisions, for at least two years prior to seeking recognition.

In conjunction with the issue of accrediting experience, the Secretary notes that 1998 amendments replace the phrase ''accrediting agency approval'' with ''accrediting agency recognition'' and generally refer to agencies as ''recognized'' rather than ''approved.'' The Secretary believes these changes simply clarify that the Secretary does not ''approve'' agencies; i.e., grant them permission to operate, conduct accrediting activities, and make accrediting decisions. Rather, the Secretary ''recognizes'' them for having demonstrated, as a result of their accrediting experience, that they are in fact reliable authorities regarding the quality of education or training provided by the institutions or programs they accredit.

Organizational and Administrative Requirements (§§ 602.14 and 602.15)

Included under this heading are §§ 602.3 and 602.21 of the current regulations. There are no significant changes to either of these sections in the proposed regulations, although some requirements are either combined to eliminate redundancy or reworded for clarity. For example, the current regulations require agencies to have adequate administrative staff to carry out their accrediting responsibilities effectively and to manage their finances effectively; they also require agencies to have adequate financial resources to carry out their accrediting responsibilities. These requirements are

combined and simplified in the proposed regulations to state that agencies must have adequate administrative staff and financial resources to carry out their accrediting responsibilities.

In another instance, the current regulations require agencies to have ''competent and knowledgeable individuals, qualified by experience and training, responsible for on-site evaluation, policy-making, and decision-making regarding accreditation and preaccreditation status.'' This provision implements the statutory requirement contained in section 496(c)(1) of the HEA that agencies must ensure ''that accreditation team members are well-trained and knowledgeable with respect to their responsibilities.'' However, agencies have not always understood the language in the current regulations to mean that those involved in the accreditation process must be well-trained in agency standards, policies, and procedures. Consequently, the proposed regulations restate the requirement explicitly by calling for agencies to have ''competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on its standards, policies, and procedures, to conduct its on-site evaluations, establish its policies, and make its accrediting decisions.''

Required Standards and Their Application (§§ 602.16 Through 602.21)

Included under this heading are all of §§ 602.24 and 602.26 of the current regulations and some sections in § 602.23. The significant changes in this group of criteria are discussed in the description of each proposed section that follows.

Section 602.16 Accreditation and Preaccreditation Standards

The proposed regulations revise and reorder the list of required accreditation standards found in § 602.26(b) of the current regulations to conform to the list found in section 496(a)(5) of the 1998 amendments. Specifically, the proposed regulations require agencies to have accreditation standards that effectively address the quality of an institution or program in the following areas: (1) Success with respect to student achievement in relation to the institution's mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates; (2) curricula; (3) faculty; (4) facilities, equipment, and supplies; (5) fiscal and administrative capacity as appropriate to the specified scale of operations; (6) student support services; (7) recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising; (8) measures of program length and the objectives of the degrees or credentials offered; (9) the record of student complaints received by, or available to, the agency; and (10) the institution's record of compliance with its program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information the Secretary may provide to the agency.

The significant changes the proposed regulations make to the list of required accreditation standards include the placement of success with respect to student achievement first rather than ninth, the elimination of the standard related to tuition and fees, the inclusion of default rates in the standard related to institutions' compliance with their Title IV responsibilities rather than in a separate standard, and the combination of the two standards that dealt with aspects of program length into a single standard.

In light of the statute's placement of success with respect to student achievement as the first of the required standards, the Secretary believes some discussion of the issue is warranted in this NPRM. Section 496(a) of the HEA requires the Secretary to establish the criteria for recognition and states that those criteria must include ''an appropriate measure or measures of student achievement.'' The Secretary believes that the standards specified in § 602.26(b)(9) of the current regulations and § 602.16(a)(1)(i) of the proposed regulations, which require agencies to have a standard that effectively addresses the success of an institution or program with respect to student achievement, fulfill this statutory requirement.

The Secretary believes that any determination by an accrediting agency that an institution or program it accredits provides quality education or training must be based, in part, on an assessment of the achievement of students enrolled in the institution or program, because the true success of an institution or program is measured by the success of its students. The Secretary further believes that success with respect to student achievement, a measure of educational outcomes, is an important indicator of educational quality, on a par with or even surpassing the more traditional focus on educational ''inputs.''

In concluding this discussion of the required accreditation standard related to success with respect to student achievement, the Secretary wishes to reiterate the comments made on this issue in the appendix to the 1994 regulations:

> An accrediting agency's standard for assessing this area should generally address the success of an institution or program in meeting its educational objectives, as measured by the achievement of its students. Typically under this standard, an agency should require the institution or program to document and assess the educational achievement of students in verifiable and consistent ways, such as student grades, grade point averages, theses or portfolios, the results of admissions tests for graduate or professional school or other standardized tests, transfer rates to institutions offering higher level programs, job placement rates, completion rates, results of licensing examinations, evaluations by employers, follow-up studies of alumni, and other recognized measures of educational outcomes. The agency should also typically require the institution or program to use effectively the information obtained in this manner to improve student achievement with respect to the degrees or certificates offered. Finally, the agency should typically monitor in a systematic way the institution's or program's performance with respect to student achievement, including, as appropriate, completion rates, job placement rates, and pass rates on State licensing examinations, or other appropriate measures of occupational competency, to determine if performance is consistent with both the institution's or program's mission and objectives and any measures the agency may have for institutions' or programs' performance with respect to student achievement. For programs that provide vocational education, agencies should establish quantitative standards for completion rates, job placement rates, and pass rates on State licensing examinations.

Section 602.17 Application of Standards in Reaching an Accrediting Decision

There are no significant changes to this section of the proposed regulations, which basically repeats §§ 602.24(b)(1) and 602.24(b)(2) of the current regulations.

Section 602.18 Ensuring Consistency in Decision-Making

There are no significant changes to this section of the proposed regulations, which basically repeats §§ 602.23(b)(3), 602.23(b)(4), and 602.26(d) of the current regulations.

Section 602.19 Monitoring and Reevaluation of Accredited Institutions and Programs

There are no significant changes to this section of the proposed regulations, which basically repeats §§ 602.24(b)(4)

and 602.24(b)(5) of the current regulations. However, the Secretary wishes to emphasize that accrediting agencies have a responsibility to monitor institutions and programs throughout their accreditation period to ensure that educational quality is maintained. While an agency may determine the policies and procedures it will use to monitor its institutions and programs, those procedures must provide for prompt and appropriate action by the agency whenever it receives substantial, credible evidence from any reliable source that indicates a systemic problem with an accredited institution or program that calls into question the ability of the institution or program to meet the agency's standards. Furthermore, the Secretary expects those policies and procedures to provide an agency with unambiguous authority to act if educational quality is at issue, even if the matters are being reviewed by other bodies, including courts. It is unacceptable for an agency to have as its policy that it will not look into, and take appropriate action based upon, information that comes to its attention through pending third-party litigation.

Section 602.20 Enforcement of standards

There are no significant changes to this section of the proposed regulations, which basically repeats § 602.26(c) of the current regulations.

Section 602.21 Review of Standards

The Secretary's criteria for the recognition of accrediting agencies have long required agencies to maintain a systematic program of review of their accrediting standards. The present statement of the requirement is contained in § 602.23(b)(5) and (b)(6) of the current regulations and emphasizes the need for agencies to carry out a program of review that ensures their standards are valid and reliable indicators of educational quality and relevant to the needs of students. The current regulations do not, however, define ''validity'' and ''reliability,'' and various technical interpretations exist for these terms that, when applied in the context of accrediting agency standards, are frequently misunderstood. Non-Federal negotiators expressed concern that because ''valid'' and ''reliable'' have established meanings in the field of statistics, the current regulations arguably imply that a systematic program of review must inevitably, or even usually, take the form of an extensive statistical analysis. Another problem with the current regulations is that they imply a well-defined conclusion to an agency's systematic program of review, at which point the agency can state with certainty that all of its standards are valid and reliable, when in fact a good systematic program of review is ongoing.

The proposed regulations include two significant changes to address these concerns. First, they avoid altogether the use of the terms ''valid'' and ''reliable'' in describing the requirements for a systematic program of review. Instead, the proposed regulations require agencies to maintain a systematic program of review that demonstrates their standards are adequate to evaluate the quality of education or training provided by the institutions and programs they accredit and relevant to the needs of students. Second, while the proposed regulations leave agencies free to determine the procedures they will follow in evaluating their standards, they require agencies to ensure that their program of review is comprehensive, occurs at regular intervals or on an ongoing basis, examines each standard and the standards as a whole, involves all of the relevant constituencies in the review, and affords those constituencies a meaningful opportunity to provide input into the review.

In proposing to eliminate the word ''reliable'' from this section, the Secretary notes that sections 496(a) and 496(c) of the HEA use the word ''reliable'' in describing agencies that may qualify for recognition. Accordingly, the Secretary has incorporated this concept into § 602.16(a)(i) of the proposed regulations, which describes as ''reliable'' an agency that has standards that effectively address each of the areas the statute requires agencies to address. The Secretary views § 602.16(a)(i) as a crucial provision of the proposed regulations and as accurately conveying the substance of the word ''reliable'' as used in the statute. Because the concept of reliability is already incorporated in § 602.16(a)(i) and because, as previously stated, it has had misleading connotations when used in the context of an agency's review of its standards, the word ''reliable'' has been deleted from § 602.21.

The proposed terminology for § 602.21 strikes a balance between overly prescriptive regulation of agency standards and processes and a requirement that looks only to the agency's review process and not to the substance of the standards. As proposed, § 602.21 places a burden on agencies to demonstrate that their standards are adequate to evaluate quality and relevant to the needs of students. At the same time, the proposed section would eliminate any implication that the program of review must take the form of a statistical analysis.

One other feature of the proposed review process is a requirement that if an agency determines at any point in its systematic program of review that it needs to make changes to its standards, it would have to initiate action within 12 months to make the changes and would have to complete that action within a reasonable period of time. This feature reflects the 1998 amendment to the HEA that sets a general deadline of 12 months for agencies to remedy identified areas of noncompliance.

The proposed procedures for making changes to an agency's standards also provide a more focused description of the notice an agency must provide about its proposed changes and ensure the opportunity for timely input by any person wishing to participate in the process.

Required Operating Policies and Procedures (§§ 602.22 Through 602.28)

Included under this heading are §§ 602.4, 602.25. 602.27, 602.28, 602.29, and 602.30 of the current regulations. The proposed regulations contain several significant changes, as discussed in the following sections.

Site Visits to Additional Locations

As discussed previously under § 602.3, the definition of ''branch campus'' in the current regulations is quite broad. This results in a significant burden being placed on agencies by requiring them to conduct a site visit within six months to each branch campus an institution established. It also places a significant burden, particularly in terms of costs, on institutions that established large numbers of sites that met the broad definition of branch campus.

The negotiating committee discussed at length how to modify the site visit requirement to ease the burden on agencies and institutions and still provide adequate protections to the Department and, ultimately, the students who attend the institutions. The consensus that was reached is reflected in these proposed regulations. Specifically, the proposed regulations redefine branch campus to match the narrow definition in the institutional eligibility regulations in 34 CFR part 600, and current site visit requirements would remain applicable to all locations that meet this definition. However, the proposed regulations provide relief from the burden of the current requirements for site visits to other newly-established

locations that offer 50 percent or more of an educational program by making them subject to evaluation under an agency's substantive change policies. Specifically, the proposed regulations require agencies to have a substantive change policy that addresses the establishment by an institution of these types of additional locations and that includes an analysis of the effect of the additional location or locations on the overall fiscal and administrative capacity of the institution.

Under the proposed regulations, an agency's substantive change policy would have to require the agency to conduct a site visit within six months to an additional location offering 50 percent or more of an educational program if any of three conditions is met. First, the agency would have to conduct a site visit to each additional location if the institution has a total of three or fewer additional locations. The proposed regulations contain this requirement because of the need for an agency to monitor an institution very closely as it begins to operate more than just the main campus; the need for such close monitoring diminishes once the institution has gained experience in establishing effective systems for the administration of multiple sites.

The proposed regulations also require an agency to conduct a site visit within six months of the establishment of an additional location if the agency has any serious concerns about the institution; e.g., if the institution has been placed on warning, probation, or show cause by the agency or is subject to some type of limitation on its accreditation. Finally, the proposed regulations require a site visit within six months to an additional location if the institution has failed to demonstrate that it has either the administrative and fiscal capacity to operate the additional locations it has already established or a proven record of effective educational oversight of additional locations.

Beyond these situations that require agencies to conduct site visits to each additional location an institution seeks to establish, the proposed regulations give agencies flexibility in deciding when to conduct site visits to additional locations. Specifically, they require agencies to have an effective mechanism for conducting additional site visits at reasonable intervals to those institutions that operate more than three additional locations. They also require agencies to have an effective mechanism, which may include site visits, for ensuring that institutions that experience rapid growth in the number of additional locations maintain educational quality.

The negotiating committee believed the proposed approach to the site visit requirement provided relief from the burden some agencies, particularly those that accredit State institutions, have experienced as a result of the requirement in the current regulations. Yet they also believed this approach retained a reasonable degree of protection by requiring site visits if circumstances warrant them.

Substantive Change

Except for the provisions related to site visits to additional locations that were discussed in the previous section, § 602.22 of the proposed regulations basically repeats § 602.25 of the current regulations. However, there are a few changes. For example, under the proposed regulations, agencies' substantive change policies would no longer need to address changes from credit to clock hours or a substantial increase in the length of a program. The former requirement was deleted because few, if any, institutions ever changed from credit to clock hours, while the latter was deleted because it duplicated another requirement.

Unannounced Inspections

The Higher Education Amendments of 1998 changed the requirement contained in § 602.24(b)(3) of the current regulations that agencies must conduct unannounced inspections of institutions that provide vocational education, making it optional rather than mandatory. Accordingly, § 602.23(f) of the proposed regulations permits an agency to establish any additional operating procedures it deems appropriate, including unannounced inspections, but it does not require the agency to conduct unannounced inspections.

Change in Ownership

While there has been no significant change to this provision in the proposed accreditation regulations, the Secretary wishes to clarify that it is the agency's definition of what constitutes a change in control, not the Department's definition, that would govern this section of the regulations. In conjunction with the statutory requirement for standards that address Title IV compliance, however, agencies whose accreditation enables the institutions they accredit to establish eligibility to participate in Title IV programs would need to take due note in their definition of ''change in control'' of those instances that are covered by the Department's definition of the term.

Teach-Out Agreements

The proposed regulations address two particular concerns with the current regulations. First, the regulations appear to require agencies to intercede in situations in which the agencies have no control because the institution has already closed. Second, they appear to imply that agencies can only approve teach-out agreements if the teach-out institution is geographically close to the closed institution and offers a program that is compatible in program structure and scheduling to that offered by the closed institution.

The proposed regulations clarify that the role of the accrediting agency is to ensure that the teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality, is reasonably similar in content, structure, and scheduling to that provided by the closed institution, and can provide students access to the program and services without requiring them to move or travel substantial distances.

The proposed regulations also require an agency to work with the Department and the appropriate State agency, to the extent feasible, to ensure that students are given reasonable opportunities to complete their education without additional charge.

Notification of Accrediting Decisions

Section 602.26 of the proposed regulations basically repeats § 602.29 of the current regulations, with one addition. The proposed regulations require an agency to provide the appropriate State licensing or authorizing agency and the appropriate accrediting agencies written notice of any final adverse decision at the same time it notifies the institution or program of the decision and to provide notice to the public within 24 hours of notifying the institution or program of the decision.

The proposed regulations mirror section 496(a)(7) of the statute in requiring agencies to report only final adverse decisions. However, the Secretary wishes to encourage all agencies to share information with the Secretary on adverse decisions that are still appealable within the agency if the information would help preserve the integrity of the Title IV, HEA programs. The Secretary believes that sharing this type of information is consistent with section 487(a)(15) of the HEA, which requires an institution that participates in the Title IV, HEA programs to acknowledge in its Program Participation Agreement the authority of

the Secretary, guarantee agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and State licensing and authorizing agencies to share with each other any information pertaining to the institution's eligibility to participate in the Title IV, HEA programs. The Secretary notes that many agencies already share this information and hopes that more will do so, particularly in those instances in which students could be harmed if the information were not shared with the Secretary.

Subpart C—The Recognition Process (§§ 602.30 Through 602.36)

This subpart basically contains the recognition procedures found in subpart C of the current regulations. The significant changes that are proposed for the recognition process are discussed in the following sections.

Application and Review by Department Staff (§§ 602.30 and 602.31)

The proposed regulations basically repeat §§ 602.10 and 602.11 of the current regulations. There are, however, three significant changes proposed for the review of an agency's application by Department staff.

First, the proposed regulations amend the procedures Department staff follows in reviewing an agency's application for initial recognition to allow staff to return the application if the agency fails to meet one or more of the basic eligibility requirements contained in §§ 602.10 through 602.13. Under the proposed procedures, staff would provide the agency with an explanation of the deficiencies resulting in its decision to return the agency's application and would recommend that the agency withdraw its application and reapply if it can demonstrate that it has corrected the deficiencies.

The second change in the proposed regulations concerns the submission of written comments by third parties and codifies the Department's current practice. Specifically, proposed § 602.31(b), (e), and(i) clarify that Department staff will consider, and forward to the Advisory Committee for consideration, only those written third-party comments received by the deadline the Department establishes in the **Federal Register** notice.

The third change concerns the provision in § 602.11(g) of the current regulations that requires Department staff to send its analysis of an agency's application to the agency at least 45 days before the Advisory Committee meeting and allows the agency the right to request that the Advisory Committee defer action on its application if Department staff fails to meet the 45-day deadline. There have been instances in recent years in which staff has been unable to meet the deadline, not through any fault of its own but rather because it was unable to complete its work due to an agency's failure to submit a required report by the deadline the Secretary established. Under § 602.31 of the proposed regulations, the agency would forfeit its right to request a deferral in those situations in which the Department's inability to meet the deadline was due to the agency's failure to respond in a timely manner to departmental requests.

Review by the National Advisory Committee on Institutional Quality and Integrity (§§ 602.32 and 602.33)

Included under this heading is § 602.12 of the current regulations and that portion of § 602.13(b) that deals with an appeal of the Advisory Committee's recommendation. The proposed regulations include three significant changes from the current regulations, two of which address what has been called the ''12-month rule.'' The third clarifies the role of the senior Department official in forwarding the Advisory Committee's recommendations to the Secretary.

The ''12-Month Rule''

The 1998 amendments require the Secretary to limit, suspend, or terminate an agency's recognition, after notice and opportunity for a hearing, if the Secretary determines that an accrediting agency has failed to perform effectively with respect to the criteria for recognition or is otherwise not in compliance with the criteria. Alternatively, the Secretary may require the agency to bring itself into compliance within a timeframe the Secretary specifies, but the timeframe may not exceed 12 months. The 1998 amendments also specify that the Secretary must, after notice and opportunity for a hearing, limit, suspend, or terminate the agency's recognition if the agency fails to bring itself into compliance within the timeframe specified by the Secretary unless the Secretary extends the timeframe for good cause.

The proposed regulations make two changes to the Advisory Committee's procedures to reflect this ''12-month rule.'' First, if the Advisory Committee, as part of its review of a recognized agency for continued recognition, determines that the agency fails to meet the criteria for recognition or is ineffective in its performance with respect to the criteria, § 602.32(b) of the proposed regulations calls for the Advisory Committee to take one of two actions. The Advisory Committee would have to recommend either (1) denial of recognition or (2) deferral of a decision on recognition for a period not to exceed 12 months, during which period the agency would have to come into compliance or face a limitation, suspension, or termination action at the conclusion of the specified timeframe.

Second, the proposed regulations delete § 602.12(c)(2) of the current regulations, which allows the Advisory Committee to recommend recognition even if the agency fails to comply with all of the criteria for recognition.

The Role of the Senior Department Official

It has been Department practice, except in cases of contested appeals of Advisory Committee recommendations, for the senior Department official to transmit the Advisory Committee's recommendations to the Secretary along with his or her own recommendations and comments on the Advisory Committee's recommendations. The language found in §§ 602.32(d) and 602.34(b) of the proposed regulations reflects this practice.

Review and Decision by the Secretary (§§ 602.34 Through 602.36)

Included under this heading are § 602.15 of the current regulations and that portion of § 602.13 that deals with the Secretary's decision. The only significant change proposed concerns the ''12-month rule.'' Under the proposed regulations, if the Secretary, as part of the review of a recognized agency for continued recognition, determines that the agency fails to meet the criteria for recognition or is otherwise not effective in its performance with respect to those criteria, the Secretary may either deny recognition or defer a decision on recognition for a period not to exceed 12 months. During the 12-month period, the agency would have to come into compliance or face a limitation, suspension, or termination action at the conclusion of the specified period. The proposed regulations allow the Secretary to extend the timeframe for the agency to come into compliance upon application by the agency for good cause shown.

The negotiating committee carefully considered whether the regulations should define ''good cause.'' In the end, the committee concluded that it was best not to define this term. Instead, the burden rests with an agency that has failed to meet the statutory deadline to demonstrate that good cause exists for

the Secretary to grant a request for an extension of time.

Section 602.35 of the proposed regulations, which describes the information that is included in the Secretary's recognition decision, differs from § 602.13(e) of the current regulations, which defines the scope of recognition the Secretary grants to an agency, and should be read in conjunction with the proposed addition regarding distance education in § 602.3 of a definition of ''scope of recognition.''

Subpart D—Limitation, Suspension, or Termination of Recognition (§§ 602.40 Through 602.45)

Included in this subpart is § 602.14 of the current regulations. The significant changes deal with the ''12-month rule'' and the hearing procedures. They are discussed in the next section.

Limitation, Suspension, and Termination Procedures (§§ 602.40 Through 602.43)

As previously mentioned, the 1998 amendments require the Secretary to limit, suspend, or terminate an agency's recognition, if after notice and opportunity for a hearing the Secretary determines that the agency has failed to effectively apply the criteria for recognition or is otherwise not in compliance with the criteria. Alternatively, the Secretary may require the agency to bring itself into compliance within a timeframe the Secretary specifies, but the timeframe may not exceed 12 months unless the Secretary extends the timeframe for good cause shown.

As previously discussed, §§ 602.32 through 602.36 of the proposed regulations implement the ''12-month rule'' in those instances in which an agency's noncompliance with the criteria for recognition comes to the Department's attention as a result of a regularly scheduled review of the agency for continued recognition. Sections 602.40 through 602.43 of the proposed regulations implement the ''12-month rule'' if the Department learns of an agency's noncompliance at any point during a previously granted period of recognition. In these latter instances, the proposed regulations permit, but do not require, the Secretary to provide a noncompliant agency up to 12 months to achieve compliance. They also permit the Secretary to extend the timeframe for achieving compliance on the basis of good cause shown.

The proposed regulations carry over the hearing procedures for a limitation, suspension, or termination of recognition action contained in § 602.14 of the current regulations with only one change. While the current procedures allow for the hearing to be held before either the full Advisory Committee or a subcommittee, the proposed regulations allow a hearing only before a subcommittee of the Advisory Committee. The principal reason for the proposed change is one of timing; i.e., to conform to the ''12-month rule.'' As the full Advisory Committee meets only twice a year, waiting to hold the hearing at one of those meetings could mean a delay of almost six months in bringing closure to the issue. Accordingly, the proposed regulations would limit the hearing to a subcommittee, which can be convened much more quickly.

Appeal Rights and Procedures (§§ 602.44 and 602.45)

There are no significant changes to these sections of the proposed regulations, which basically repeat § 602.14(f) of the current regulations.

Subpart E—Department Responsibilities (§ 602.50)

There are no significant changes to this section of the proposed regulations, which basically repeats § 602.5 of the current regulations.

Other Changes

To comply with some terminology changes to the HEA resulting from the Higher Education Amendments of 1998, the proposed regulations contain some other changes. First, they would replace the State Postsecondary Review entities with State licensing or authorizing agencies. Second, they would consistently use the term ''standards'' rather than ''criteria'' or ''standards and criteria'' to refer to requirements institutions or programs must meet in order to become accredited or preaccredited by an agency.

Finally, the proposed regulations have been written in ''plain language.'' Further discussion of this change is in the Executive Order 12866 section under the heading ''Clarity of the Regulations.''

General Comments on the Recognition Process

The Secretary acknowledges that the application for recognition constitutes a significant burden on agencies that seek recognition. For this reason, the Secretary is considering ways to reduce the burden. One approach under consideration is to allow a recognized agency applying for continued recognition to provide a simple statement of assurance, along with some supporting documentation, that it continues to meet each of the criteria for recognition. The supporting documentation might include a complete set of the agency's standards, policies, procedures, and by-laws.

Another approach under consideration is to have Department staff conduct a site visit to agency headquarters for the purpose of determining, through reviews of agency files and interviews with agency staff, any significant changes that might affect the agency's ability to meet certain requirements for recognition. The Secretary estimates that at least two-thirds of the requirements in the proposed regulations might be amenable to this type of approach, and the resultant savings in time, effort, and cost to prepare an application for recognition would be significant.

Still another approach under consideration is to identify other sections of the regulations, similar to § 602.12 of the proposed regulations, that recognized agencies would not need to address in their application for continued recognition.

The Secretary invites comments on these approaches and suggestions for alternative methods for reducing the burden of the application process on agencies without adversely affecting the Secretary's ability to conduct a thorough evaluation of the agency.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for a determination that an accrediting agency that seeks recognition is in fact a reliable authority regarding the quality of education or training provided by the institutions or programs it accredits. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading ''Paperwork Reduction Act of 1995.''

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs. We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the

various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit. Elsewhere in this preamble we discuss the potential costs and benefits of the various requirements in the proposed regulations under the heading ''Regulatory Flexibility Act Certification.''

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, tables, etc.) aid or reduce clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A section is preceded by the symbol ''§ '' and a numbered heading; for example, § 602.16 Accreditation and preaccreditation standards.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations will affect accrediting agencies that apply for Secretarial recognition and the institutions they accredit or that house the programs they accredit. The proposed regulations reduce the burden on both agencies and institutions by eliminating the requirement that agencies conduct unannounced inspections of institutions that offer vocational education and by greatly reducing the number of site visits agencies must make if institutions establish additional locations. The proposed regulations impose the minimum requirements needed to ensure the proper implementation of the Secretary's statutory mandate to recognize only those accrediting agencies that are reliable authorities regarding the quality of education or training provided by the institutions or programs they accredit.

Paperwork Reduction Act of 1995

Sections 602.16, 602.24, 602.26, 602.27, and 602.30 contain information collection requirements. In addition, §§ 602.15(b) and 602.23(a) contain specific record retention requirements, and §§ 602.23(e) and 602.28(e) contain third party disclosure requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

These proposed regulations contain significant information collection requirements for accrediting agencies applying for recognition by the Secretary, as well as additional requirements for recognized agencies during their recognition period. The Department needs and uses the information collected to determine whether an agency seeking recognition by the Secretary meets the requirements for recognition and whether, if the agency is recognized, it continues to operate in compliance with the requirements for recognition throughout its recognition period.

Collection of Information: The Secretary's Recognition of Accrediting Agencies

Each accrediting agency that seeks initial or continued recognition is required by § 602.30 to submit an application for recognition demonstrating how it meets each of the criteria for recognition. We estimate that it takes an agency approximately 80 hours to complete its application, including time for reviewing instructions, searching existing data bases, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total burden on the 61 agencies recognized under the current regulations to submit an application for continued recognition would be 4,880 hours. As agencies must submit an application for recognition only once every five years, this represents a total annual burden of 976 hours.

We also estimate that the burden on an agency to provide to the Department on an annual basis the various documents and reports required under §§ 602.26 and 602.27 would be one hour. Thus, the total annual reporting requirement for the 61 recognized agencies would be 61 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 602

Colleges and universities, Education, Reporting and recordkeeping requirements.

Dated: June 16, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 602 to read as follows:

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

Authority: 20 U.S.C. 1099b, unless otherwise noted.

Subpart A—General

§ 602.1 Why does the Secretary recognize accrediting agencies?

(a) The Secretary recognizes accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

(b) The Secretary lists an agency as a nationally recognized accrediting agency if the agency meets the criteria for recognition listed in subpart B of this part.

(Authority: 20 U.S.C. 1099b)

§ 602.2 How do I know which agencies the Secretary recognizes?

(a) Periodically, the Secretary publishes a list of recognized agencies in the **Federal Register**, together with each agency's scope of recognition. You may obtain a copy of the list from the Department at any time. The list is also available on the Department's web site.

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency's recognition before the end of its recognition period, the Secretary publishes a notice of that action in the **Federal Register**. The Secretary also makes the reasons for the action available to the public, on request.

(Authority: 20 U.S.C. 1099b)

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Accrediting agency or *agency* means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action or *adverse action* means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Branch campus means a location of an institution that meets the definition of branch campus in 34 CFR 600.2.

Distance education means an educational process that is characterized by the separation, in time or place, between instructor and student. The term includes courses offered principally through the use of—

(1) Television, audio, or computer transmission, such as open broadcast, closed circuit, cable, microwave, or satellite transmission;

(2) Audio or computer conferencing;

(3) Video cassettes or disks; or

(4) Correspondence.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is not appealable within the agency.

Institution of higher education or *institution* means an educational institution that qualifies, or may qualify, as an eligible institution under 34 CFR part 600.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Nationally recognized accrediting agency, nationally recognized agency, or *recognized agency* means an accrediting agency that the Secretary recognizes under this part.

Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

Representative of the public means a person who is not—

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Scope of recognition or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to—

(1) Geographic area of accrediting activities;

(2) Types of degrees and certificates covered;

(3) Types of institutions and programs covered;

(4) Types of preaccreditation status covered, if any; and

(5) Coverage of accrediting activities related to distance education, if any.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

Senior Department official means the senior official in the U.S. Department of Education who reports directly to the Secretary regarding accrediting agency recognition.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program have completed the program.

(Authority: 20 U.S.C. 1099b)

Subpart B—The Criteria for Recognition

Basic Eligibility Requirements

§ 602.10 Link to Federal programs.

The agency must demonstrate that—

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs; or

(b) If the agency accredits institutions of higher education or higher education programs, or both, its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

(Authority: 20 U.S.C. 1099b)

§ 602.11 Geographic scope of accrediting activities.

The agency must demonstrate that its accrediting activities cover—

(a) A State, if the agency is part of a State government;

(b) A region of the United States that includes at least three States that are reasonably close to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has—

(1) Granted accreditation or preaccreditation—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(iii) In the geographic area for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.

(b) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(Authority: 20 U.S.C. 1099b)

§ 602.13 Acceptance of the agency by others.

The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by—

(a) Educators and educational institutions; and

(b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

Organizational and Administrative Requirements

§ 602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of agencies:

The Secretary recognizes * * *	that * * *
(1) An accrediting agency	(i) Has a voluntary membership of institutions of higher education; (ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and (iii) Satisfies the ''separate and independent'' requirements in paragraph (b) of this section.
(2) An accrediting agency	(i) Has a voluntary membership; and (ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.
(3) An accrediting agency	For purposes of determining eligibility for Title IV, HEA programs— (i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and (ii) Either satisfies the ''separate and independent'' requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.
(4) A State agency	(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and (ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.

(b) For purposes of this section, the term *separate and independent* means that—

(1) The members of the agency's decision-making body—who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public;

(3) The agency has established and implemented guide lines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the ''separate and independent'' requirements in paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d) For purposes of paragraph (a)(3) of this section, the Secretary may waive the ''separate and independent'' requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991 and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently; and

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the ''separate and independent'' requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(Authority: 20 U.S.C. 1099b)

§ 602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that—

(a) The agency has—

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on its standards, policies, and procedures, to conduct its on-site evaluations, establish its policies, and make its accrediting and preaccrediting decisions;

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators and practitioners on its evaluation, policy, and decision-making bodies, if the agency accredits programs;

(5) Representatives of the public on all decision-making bodies; and

(6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's—

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

(b) The agency maintains complete and accurate records of—

(1) Its last two full accreditation or preaccreditation reviews of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

(2) All decisions regarding the accreditation and preaccreditation of any institution or program, including all correspondence that is significantly related to those decisions.

(Authority: 20 U.S.C. 1099b)

Required Standards and Their Application

§ 602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if—

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

(2) The agency's preaccreditation standards, if offered, are appropriately related to the agency's accreditation standards and do not permit the institution or program to hold preaccreditation status for more than five years.

(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(c) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(d) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

(Authority: 20 U.S.C. 1099b)

§ 602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded;

(2) Is successful in achieving its stated objectives; and

(3) Maintains degree and certificate requirements that at least conform to commonly accepted standards;

(b) Requires the institution or program to prepare, following guidance provided by the agency, an in-depth self-study that includes the assessment of educational quality and the institution's or program's continuing efforts to improve educational quality;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other appropriate information from other sources to determine whether the institution or program complies with the agency's standards; and

(f) Provides the institution or program with a detailed written report that assesses—

(1) The institution's or program's compliance with the agency's standards, including areas needing improvement; and

(2) The institution's or program's performance with respect to student achievement.

(Authority: 20 U.S.C. 1099b)

§ 602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce its standards to ensure that the education or training offered by an institution or program, including any offered through distance education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency—

(a) Has effective controls against the inconsistent application of the agency's standards;

(b) Bases decisions regarding accreditation and preaccreditation on the agency's published standards; and

(c) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate.

(Authority: 20 U.S.C. 1099b)

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must monitor institutions or programs throughout their accreditation or preaccreditation period to ensure that they remain in compliance with the agency's standards. This includes conducting special evaluations or site visits, as necessary.

(Authority: 20 U.S.C. 1099b)

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed—

(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

(Authority: 20 U.S.C. 1099b)

§ 602.21 Review of standards.

(a) The agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the needs of students.

(b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review—

(1) Is comprehensive;

(2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;

(3) Examines each of the agency's standards and the standards as a whole; and

(4) Involves all of the agency's relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time. Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency's relevant constituencies of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and

(3) Take into account any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties.

(Authority: 20 U.S.C. 1099b)

Required Operating Policies and Procedures

§ 602.22 Substantive change.

(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—

(1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(2) The agency's definition of substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

(ii) Any change in the legal status, form of control, or ownership of the institution.

(iii) The addition of courses or programs that represent a significant departure, in either content or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of courses or programs at a degree or credential level above that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) The establishment of an additional location geographically apart from the main campus at which the institution offers at least 50 percent of an educational program.

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. Except as provided in paragraph (c) of this section, these may, but need not, require a visit by the agency.

(c) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in Title IV, HEA programs, the agency's procedures for the approval of an additional location described in paragraph (a)(2)(vii) of this section must determine if the institution has the fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include—

(1) A visit, within six months, to each additional location the institution establishes, if the institution—

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) An effective mechanism for conducting, at reasonable intervals, visits to additional locations of institutions that operate more than three additional locations; and

(3) An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

(Authority: 20 U.S.C. 1099b)

§ 602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public, upon request, written materials describing—

(1) Each type of accreditation and preaccreditation it grants;

(2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of—

(i) The members of the agency's policy and decision-making bodies; and

(ii) The agency's principal administrative staff.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for

accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or preaccreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both.

(c) The accrediting agency must—

(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, address, and telephone number of the agency.

(e) The accrediting agency must provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about—

(1) The accreditation or preaccreditation status of the institution or program;

(2) The contents of reports of on-site reviews; and

(3) The agency's accrediting or preaccrediting actions with respect to the institution or program.

(f) The agency may establish any additional operating procedures it deems appropriate. At the agency's discretion, these may include unannounced inspections.

(Authority: 20 U.S.C. 1099b)

§ 602.24 Additional procedures certain institutional accreditors must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) Branch campus. (1) The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(i) The educational program to be offered at the branch campus;

(ii) The projected revenues and expenditures and cash flow at the branch campus; and

(iii) The operation, management, and physical resources at the branch campus.

(2) The agency may extend accreditation to the branch campus only after it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency's standards.

(3) The agency must undertake a site visit to the branch campus as soon as practicable, but no later than six months after the establishment of that campus.

(b) Change in ownership. The agency must undertake a site visit to an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership.

(c) Teach-out agreements. (1) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement with another institution to submit that teach-out agreement to the agency for approval.

(2) The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that—

(i) The teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the closed institution; and

(ii) The teach-out institution demonstrates that it can provide students access to the program and services without requiring them to move or travel substantial distances.

(3) If an institution the agency accredits or preaccredits closes, the agency must work with the Department and the appropriate State agency, to the extent feasible, to ensure that students are given reasonable opportunities to complete their education without additional charge.

(Authority: 20 U.S.C. 1099b)

§ 602.25 Due process.

The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) The agency uses procedures that afford an institution or program a reasonable period of time to comply with the agency's requests for information and documents.

(b) The agency notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(c) The agency permits the institution or program the opportunity to appeal an adverse action and the right to be represented by counsel during that appeal. If the agency allows institutions or programs the right to appeal other types of actions, the agency has the discretion to limit the appeal to a written appeal.

(d) The agency notifies the institution or program in writing of the result of its appeal and the basis for that result.

(Authority: 20 U.S.C. 1099b)

§ 602.26 Notification of accrediting decisions.

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures—

(a) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after it makes the decision:

(1) A decision to award initial accreditation or preaccreditation to an institution or program.

(2) A decision to renew an institution's or program's accreditation or preaccreditation;

(b) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to place an institution or program on probation or an equivalent status.

(2) A final decision to deny, withdraw, suspend, revoke, or terminate

the accreditation or preaccreditation of an institution or program;

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1) and (b)(2) of this section within 24 hours of its notice to the institution or program;

(d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public upon request, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the comments, if any, that the affected institution or program may wish to make with regard to that decision; and

(e) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 30 days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 30 days of the date on which accreditation or preaccreditation lapses.

(Authority: 20 U.S.C. 1099b)

§ 602.27 Other information an agency must provide the Department.

The agency must submit to the Department—

(a) A copy of any annual report it prepares;

(b) A copy, updated annually, of its directory of accredited and preaccredited institutions and programs;

(c) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(d) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its—

(1) Scope of recognition; or

(2) Compliance with the criteria for recognition;

(e) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(f) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in Title IV, HEA programs. The Secretary may ask for this information to assist the Department in resolving problems with the institution's participation in the Title IV, HEA programs.

(Authority: 20 U.S.C. 1099b)

§ 602.28 Regard for decisions of States and other accrediting agencies.

(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack legal authorization under applicable State law to provide a program of education beyond the secondary level.

(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of—

(1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;

(2) A decision by a recognized agency to deny accreditation or preaccreditation;

(3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) Probation or an equivalent status imposed by a recognized agency.

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency's grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(Authority: 20 U.S.C. 1099b)

Subpart C—The Recognition Process

Application and Review by Department Staff

§ 602.30 How does an agency apply for recognition?

(a) An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. The application must consist of—

(1) A statement of the agency's requested scope of recognition;

(2) Evidence that the agency complies with the criteria for recognition listed in subpart B of this part; and

(3) Supporting documentation.

(b) By submitting an application for recognition, the agency authorizes Department staff to observe its site visits and decision meetings and to gain access to agency records, personnel, and facilities on an announced or unannounced basis.

(c) The Secretary does not make available to the public any confidential agency materials a Department employee reviews during the evaluation of either the agency's application for recognition or the agency's compliance with the criteria for recognition.

(Authority: 20 U.S.C. 1099b)

§ 602.31 How does Department staff review an agency's application?

(a) Upon receipt of an agency's application for either initial or continued recognition, Department staff—

(1) Establishes a schedule for the review of the agency by Department staff, the National Advisory Committee on Institutional Quality and Integrity, and the Secretary;

(2) Publishes a notice of the agency's application in the **Federal Register**, inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment; and

(3) Provides State licensing or authorizing agencies, all currently recognized accrediting agencies, and other appropriate organizations with copies of the **Federal Register** notice.

(b) Department staff analyzes the agency's application to determine

whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and any deficiencies in the agency's performance with respect to the criteria. The analysis in cludes—

(1) Site visits, on an announced or unannounced basis, to the agency and, at the Secretary's discretion, to some of the institutions or programs it accredits or preaccredits;

(2) Review of the public comments and other third-party information the Department staff receives by the established deadline, as well as any other information Department staff assembles for purposes of evaluating the agency under this part; and

(3) Review of complaints or legal actions involving the agency.

(c) Department staff's evaluation may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards.

(d) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate substantial compliance with the basic eligibility requirements in §§ 602.10 through 602.13, the staff—

(1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and

(2) Recommends that the agency withdraw its application and reapply when the agency can demonstrate compliance.

(e) Except with respect to an application that is withdrawn under paragraph (d) of this section, when Department staff completes its evaluation of the agency, the staff—

(1) Prepares a written analysis of the agency, which includes a recognition recommendation;

(2) Sends the analysis and all supporting documentation, including all third-party comments the Department received by the established deadline, to the agency no later than 45 days before the Advisory Committee meeting; and

(3) Invites the agency to provide a written response to the staff analysis and third-party comments, specifying a deadline for the response that is at least two weeks before the Advisory Committee meeting.

(f) If Department staff fails to provide the agency with the materials described in paragraph (e)(2) of this section at least 45 days before the Advisory Committee meeting, the agency may request that the Advisory Committee defer acting on the application at that meeting. If Department staff's failure to send the materials at least 45 days before the Advisory Committee meeting is due to the failure of the agency to submit reports or other information the Secretary requested by the deadline the Secretary established, the agency forfeits its right to request a deferral.

(g) Department staff reviews any response to the staff analysis that the agency submits. If necessary, Department staff prepares an addendum to the staff analysis and provides the agency with a copy.

(h) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with the following information:

(1) The agency's application for recognition and supporting documentation.

(2) The Department staff analysis of the agency.

(3) Any written third-party comments the Department received about the agency on or before the established deadline.

(4) Any agency response to either the Department staff analysis or third-party comments.

(5) Any addendum to the Department staff analysis.

(6) Any other information Department staff relied on in developing its analysis.

(i) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the **Federal Register** inviting interested parties, including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

(Authority: 20 U.S.C. 1099b)

Review by the National Advisory Committee on Institutional Quality and Integrity

§ 602.32 What is the role of the Advisory Committee and the senior Department official in the review of an agency's application?

(a) The Advisory Committee considers an agency's application for recognition at a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations at the meeting. A transcript is made of each Advisory Committee meeting.

(b) When it concludes its review, the Advisory Committee recommends that the Secretary either approve or deny recognition or that the Secretary defer a decision on the agency's application for recognition.

(1)(i) The Advisory Committee recommends approval of recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the Advisory Committee recommends approval, the Advisory Committee also recommends a recognition period and a scope of recognition.

(iii) If the recommended scope or period of recognition is less than that requested by the agency, the Advisory Committee explains its reasons for recommending the lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the Advisory Committee recommends denial of recognition, unless the Advisory Committee concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Advisory Committee recommends denial, the Advisory Committee specifies the reasons for its recommendation, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively.

(3)(i) The Advisory Committee may recommend deferral of a decision on recognition if it concludes that the agency's deficiencies do not warrant immediate loss of recognition and if it concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

(ii) In its deferral recommendation, the Advisory Committee states the bases for its conclusions, specifies any criteria for recognition the agency fails to meet, and identifies any areas in which the agency fails to perform effectively with respect to the criteria.

(iii) The Advisory Committee also recommends a deferral period, which may not exceed 12 months, either alone or in combination with any expiring deferral period in which similar deficiencies in compliance or performance were cited by the Secretary.

(c) At the conclusion of its meeting, the Advisory Committee forwards its recommendations to the Secretary through the senior Department official.

(d) For any Advisory Committee recommendation not appealed under

§ 602.33, the senior Department official includes with the Advisory Committee materials forwarded to the Secretary a memorandum containing the senior Department official's recommendations regarding the actions proposed by the Advisory Committee.

(Authority: 20 U.S.C. 1099b and 1145)

§ 602.33 How may an agency appeal a recommendation of the Advisory Committee?

(a) Either the agency or the senior Department official may appeal the Advisory Committee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after the Advisory Committee meeting;

(2) Submit its appeal in writing to the Secretary no later than 30 days after the Advisory Committee meeting; and

(3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The non-appealing party may file a written response to the appeal. If that party wishes to do so, it must—

(1) Submit its response to the Secretary no later than 30 days after receiving its copy of the appeal; and

(2) Provide the appealing party with a copy of its response at the same time it submits its response to the Secretary.

(c) Neither the agency nor the senior Department official may include any new evidence in its submission; i.e., evidence it did not previously submit to the Advisory Committee.

(Authority: 20 U.S.C. 1099b and 1145)

Review and Decision by the Secretary

§ 602.34 What does the Secretary consider when making a recognition decision?

The Secretary makes the decision regarding recognition of an agency based on the entire record of the agency's application, including the following:

(a) The Advisory Committee's recommendation.

(b) The senior Department official's recommendation, if any.

(c) The agency's application and supporting documentation.

(d) The Department staff analysis of the agency.

(e) All written third-party comments forwarded by Department staff to the Advisory Committee for consideration at the meeting.

(f) Any agency response to the Department staff analysis and third-party comments.

(g) Any addendum to the Department staff analysis.

(h) All oral presentations at the Advisory Committee meeting.

(i) Any materials submitted by the parties, within the established timeframes, in an appeal taken in accordance with § 602.33.

(Authority: 20 U.S.C. 1099b)

§ 602.35 What information does the Secretary's recognition decision include?

(a) The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's application for recognition.

(b) The Secretary either approves or denies recognition or defers a decision on the agency's application for recognition.

(1)(i) The Secretary approves recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the Secretary approves recognition, the Secretary's recognition decision defines the scope of recognition and the recognition period.

(iii) If the scope or period of recognition is less than that requested by the agency, the Secretary explains the reasons for approving a lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the Secretary denies recognition, unless the Secretary concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Secretary denies recognition, the Secretary specifies the reasons for this decision, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively.

(3)(i) The Secretary may defer a decision on recognition if the Secretary concludes that the agency's deficiencies do not warrant immediate loss of recognition and if the Secretary concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

(ii) In the deferral decision, the Secretary states the bases for the Secretary's conclusions, specifies any criteria for recognition the agency fails to meet, and identifies any areas in which the agency fails to perform effectively with respect to the criteria.

(iii) The Secretary also establishes a deferral period, which does not exceed 12 months, either alone or in combination with any expiring deferral period in which similar deficiencies in compliance or performance were cited by the Secretary, except that the Secretary may grant an extension of an expiring deferral period at the request of the agency for good cause shown.

(c) The recognition period may not exceed five years.

(d) If the Secretary does not reach a final decision on an agency's application for continued recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until the final decision is reached.

(Authority: 20 U.S.C. 1099b)

§ 602.36 May an agency appeal the Secretary's final recognition decision?

An agency may appeal the Secretary's decision under this part in the Federal courts as a final decision in accordance with applicable Federal law.

(Authority: 20 U.S.C. 1099b)

Subpart D—Limitation, Suspension, or Termination of Recognition

Limitation, Suspension, and Termination Procedures

§ 602.40 How may the Secretary limit, suspend, or terminate an agency's recognition?

(a) If the Secretary determines, after notice and an opportunity for a hearing, that a recognized agency does not comply with the criteria for recognition in subpart B of this part or that the agency is not effective in its performance with respect to those criteria, the Secretary—

(1) Limits, suspends, or terminates the agency's recognition; or

(2) Requires the agency to take appropriate action to bring itself into compliance with the criteria and achieve effectiveness within a timeframe that may not exceed 12 months.

(b) If, at the conclusion of the timeframe specified in paragraph (a)(2) of this section, the Secretary determines, after notice and an opportunity for a hearing, that the agency has failed to bring itself into compliance or has failed to achieve effectiveness, the Secretary limits, suspends, or terminates recognition, unless the Secretary extends the timeframe, on request by the agency for good cause shown.

(Authority: 20 U.S.C. 1099b)

§ 602.41 What are the notice procedures?

(a) Department staff initiates an action to limit, suspend, or terminate an agency's recognition by notifying the agency in writing of the Secretary's

intent to limit, suspend, or terminate recognition. The notice—

(1) Describes the specific action the Secretary seeks to take against the agency and the reasons for that action, including the criteria with which the agency has failed to comply;

(2) Specifies the effective date of the action; and (3) Informs the agency of its right to respond to the notice and request a hearing.

(b) Department staff may send the notice described in paragraph (a) of this section at any time the staff concludes that the agency fails to comply with the criteria for recognition in subpart B of this part or is not effective in its performance with respect to those criteria.

(Authority: 20 U.S.C. 1099b)

§ 602.42 What are the response and hearing procedures?

(a) If the agency wishes either to respond to the notice or request a hearing, or both, it must do so in writing no later than 30 days after it receives the notice of the Secretary's intent to limit, suspend, or terminate recognition.

(1) The agency's submission must identify the issues and facts in dispute and the agency's position on them.

(2) If neither a response nor a request for a hearing is filed by the deadline, the notice of intent becomes a final decision by the Secretary.

(b)(1) After receiving the agency's response and hearing request, if any, the Secretary chooses a subcommittee composed of five members of the Advisory Committee to adjudicate the matter and notifies the agency of the subcommittee's membership.

(2) The agency may challenge membership of the subcommittee on grounds of conflict of interest on the part of one or more members and, if the agency's challenge is successful, the Secretary will replace the member or members challenged.

(c) After the subcommittee has been selected, Department staff sends the members of the subcommittee copies of the notice to limit, suspend, or terminate recognition, along with the agency's response, if any.

(d)(1) If a hearing is requested, it is held in Washington, DC, at a date and time set by Department staff.

(2) A transcript is made of the hearing.

(3) Except as provided in paragraph (e) of this section, the subcommittee allows Department staff, the agency, and any interested party to make an oral or written presentation, which may include the introduction of written and oral evidence.

(e) On agreement by Department staff and the agency, the subcommittee review may be based solely on the written materials submitted.

(Authority: 20 U.S.C. 1099b)

§ 602.43 How is a decision on limitation, suspension, or termination of recognition reached?

(a) After consideration of the notice of intent to limit, suspend, or terminate recognition, the agency's response, if any, and all submissions and presentations made at the hearing, if any, the subcommittee issues a written opinion and sends it to the Secretary, with copies to the agency and the senior Department official. The opinion includes—

(1) Findings of fact, based on consideration of all the evidence, presentations, and submissions before the subcommittee;

(2) A recommendation as to whether a limitation, suspension, or termination of the agency's recognition is warranted; and

(3) The reasons supporting the subcommittee's recommendation.

(b) Unless the subcommittee's recommendation is appealed under § 602.44, the Secretary issues a final decision on whether to limit, suspend, or terminate the agency's recognition. The Secretary bases the decision on consideration of the full record before the subcommittee and the subcommittee's opinion.

(Authority: 20 U.S.C. 1099b)

Appeal Rights and Procedures

§ 602.44 How may an agency appeal the subcommittee's recommendation?

(a) Either the agency or the senior Department official may appeal the subcommittee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after receipt of the recommendation;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the recommendation; and

(3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The non-appealing party may file a written response to the appeal. If that party wishes to do so, it must—

(1) Submit its response to the Secretary no later than 30 days after receiving its copy of the appeal; and

(2) Provide the appealing party with a copy of its response at the same time it submits its response to the Secretary.

(c) Neither the agency nor the senior Department official may include any new evidence in its submission, i.e., evidence it did not previously submit to the subcommittee.

(d) If the subcommittee's recommendation is appealed, the Secretary renders a final decision after taking into account that recommendation and the parties' written submissions on appeal, as well as the entire record before the subcommittee and the subcommittee's opinion.

(Authority: 20 U.S.C. 1099b)

§ 602.45 May an agency appeal the Secretary's final decision to limit, suspend, or terminate its recognition?

An agency may appeal the Secretary's final decision limiting, suspending, or terminating its recognition to the Federal courts as a final decision in accordance with applicable Federal law.

(Authority: 20 U.S.C. 1099b)

Subpart E—Department Responsibilities

§ 602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

(a) If the Department takes an action against an institution or program accredited by the agency, it notifies the agency no later than 10 days after taking that action.

(b) If another Federal agency or a State agency notifies the Department that it has taken an action against an institution or program accredited by the agency, the Department notifies the agency as soon as possible but no later than 10 days after receiving the written notice from the other Government agency.

(Authority: 20 U.S.C. 1099b)

Appendix—Distribution Table Showing The Reorganization of The Current Regulations

Note: The following appendix will not appear in the Code of Federal Regulations.

The following table shows where each section of the current regulations is found in the proposed regulations.

Section in current regulations	Location in proposed regulations
§ 602.1	§§ 602.1 and 602.10.
§ 602.2	§ 602.3.
§ 602.3	§ 602.14.
§ 602.4	§§ 602.26 and 602.27.
§ 602.5	§ 602.50.
§ 602.10	§ 602.30.
§ 602.11	§ 602.31.
§ 602.12	§§ 602.32 and 602.33.
§ 602.13	§§ 602.3, 602.34, and 602.35.

Section in current regulations	Location in proposed regulations
§ 602.14	§§ 602.40 through 602.44.
§ 602.15	§§ 602.36 and 602.45.
§ 602.16	§ 602.2.
§ 602.20	§ 602.11.
§ 602.21	§ 602.15.
§ 602.22	§§ 602.12 and 602.13.
§ 602.23	§§ 602.18, 602.21, and 602.23.
§ 602.24	§§ 602.17, 602.19, and 602.23.
§ 602.25	§ 602.22.
§ 602.26	§§ 602.16, 602.18, and 602.20.
§ 602.27	§§ 602.23 and 602.24.
§ 602.28	§ 602.25.
§ 602.29	§ 602.26.
§ 602.30	§ 602.28.

[FR Doc. 99–16143 Filed 6–24–99; 8:45 am]

BILLING CODE 4000–01–P